



**Town of Tyngsborough**  
**Board of Appeals**

Town Hall-25 Bryants Lane  
Tyngsborough, Ma 01879-1003  
(978) 649-2300, Ext. 112

Minutes from February 10, 2005.

Members Present: Gary Ralls, Eileen Farrell, Claire Cloutier, Cheryl Bradley, Julie Chasse

1st Hearing:

**Garmon, George & Barbara, 20 Upton Drive**, Map 20A, Parcel 33, variance for lot area, frontage, side yard set backs for the construction of a single family home. R-1 Zone, section 2.12.50.

Board of Appeals conducted a properly advertised public hearing on December 9, 2004 at that hearing the Board of Appeals members requested to continue this hearing to January 13, 2005 in order to speak to Town Counsel. January 13, 2005 was continued to Feb.10, 2005 due to original two members who couldn't attend the Jan. 13, 2005 meeting.

Representing the applicant was Atty. George Malonis.

Gary Ralls re-opened the hearing.

Atty. Malonis discussed the three lots, Lots 5,6,7. On Lot 5 & 6 house was built. On Lot # 7, was a separate lot. Mr. Garmon always believed that it was a buildable lot. The zoning change in 1987. Garmon needs to build on this lot so he can take care of his wife who is in housing care.

Three abutters spoke in favor of the application- 10 Upton Drive. No abutters spoke against the application.

Questions from the board, Did Mr. Garmon ever get anything in writing from previous Selectmen to verify that this happened?

Garmon stated he has nothing in writing and discussed the Ice House back in 1946 lot. It was separate deeds and separate tax bills. He was told that all lots were buildable.

Member asked Mr. Garmon, How long did he get separate tax bills? Garmon-stated since 1988. The Assessors Dept. told him that he was all set.

Member asked about the quitclaim deed and why in NH not MA? Mr. Garmon stated that he put it in a trust for himself. The Attorney was licensed in NH and MA.

Member discussed the zoning on joining lots. These are now all on one lot. Discussed the Zoning change in 1987. This lot is now non-conforming. Member stated that Mr. Garmon was given bad information. The Board cannot create a non-conforming lot only Town Meeting can. In the past we have denied applicants like this. We don't allow it in Town.

Mr. Garmon general discussion of the Trust, Quitclaim Deed.

Member discussed the similar lots around the Lake area and explanation of the zoning of joining two pieces of property would be one lot. Someone gave you bad information. This Board cannot do this.

One member discussed that they spoke to Town Counsel, Atty. Zaroulis and asked him if we can do this? Since the lots are only in one name we can't do this. This can only be done at Town Meeting by doing a Zoning Change of the area of Town.

Member discussed that we needed to speak to Charles Zaroulis to get his opinion and that took some time and delays with this hearing.

Members explanation to the abutters the zoning change in 1987 and discussed the hardship issue.

Atty. Malonis doesn't not disagree with the Board, knows the law, legally it is not buildable but this is a unique situation.

One member (Julie Chasse) discussed that we should help people, walked out of the hearing and stated that she re-signed from the Board. Eileen Farrell stated that we need it in writing.

General discussion of the appeal to state process and they can go to Town Meeting for a vote change. This is a tough discussion for the Board.

George Malonis stated that he would not appeal the decision.

One abutter stated that we need to un-screw the screw-ups.

Motion to close the public portion of the hearing by Farrell, Seconded by Cloutier. Vote 4-0.

Motion by Eileen Farrell to deny the variance due to we cannot create a non-conforming lot, not in our jurisdiction. Seconded by Cloutier. Vote 3-1.

Three votes against the application and one vote for the applicant. Voting against application is Rall, Farrell, Cloutier. Voting for applicant is Bradley. Application denied.

#### **Other Business:**

Approve minutes -

Motion to approve minutes from December 9, 2004 by Farrell. Seconded by Cloutier. Vote 2-0.

Motion to approve minutes from January 13, 2005 by Bradley, seconded by Bradley. Vote 2-0.

**Meeting adjourn. 7:45PM**